IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

Crl.MC.No. 260 of 2007()

ST.689/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, PONNANI

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PETITIONER: ACCUSED

K.SIRAJUDHEEN, S/O.YUSUF,
KUNNIKALAKAM HOUSE, J.M.ROAD,
PONNANI, MALAPPURAM DISTRICT.

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENTS: COMPLAINANT AND STATE

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1. P.P.UMMER, S/O.BAPPU HAJI,
PADIKKAPARAMBIL HOUSE, KANJIRAMUKKU AMSOM
& DESOM, PERUMBADAPPU, MALAPPURAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01/03/2007, ALONG WITH CRMC NO. 263 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NOs. 260 & 263 OF 2007

Dated this the 1st day of March, 2007

ORDER

The common petitioner in these Crl.M.Cs. face indictment in two separate prosecutions – both initiated by the 1st respondent/complainant herein. The complaint was filed belatedly and applications were filed for condonation of delay. C.M.P.Nos.824 & 828/04 are the applications filed for condonation of delay in these two prosecutions. The grievance of the petitioner is that the said petitions have been disposed of and the delay condoned without any notice to the petitioner and without giving him an opportunity to raise his objections against the prayer for condonation of delay.

2. In the light of the contentions raised by the petitioner, report of the learned Magistrate was called for. The learned Magistrate in his report dated 20/2/07 makes it crystal clear that no notice was issued to the petitioner/accused before the petitions for condonation of delay were considered and disposed of. It is very specifically reported that no speaking

order is seen passed by the then Magistrate in C.M.P.Nos.824 & 828/04.

3. I am, in these circumstances, satisfied that there is substance in the grievance raised by the petitioner. Appropriate directions can, in these circumstances, be issued.

4. Notice has been given and the respondent/complainant has entered appearance through counsel. There is no contention that any speaking order has been passed by the learned Magistrate on the applications for condonation of delay after due notice to the petitioner/accused.

5. In the result:

(i) These Crl.M.Cs. are allowed.

(ii) The orders passed by the learned Magistrate in C.M.P.Nos.824 & 828/04 are set aside.

(iii) The learned Magistrate is directed to pass fresh orders on those applications for condonation of delay in filing the complaints after giving the petitioner/accused an opportunity to raise his objections. Thereafter, after giving both parties opportunities to substantiate their contentions and after hearing both sides, the learned Magistrate shall proceed to pass appropriate orders in those C.M.Ps.

(iv) Cognizance taken in the two cases is also set aside. The question of cognizance shall be considered now after the disposal of C.M.P.Nos.824 & 828/04.

(v) The parties are directed to appear before the learned Magistrate without waiting for any further notice on the next date of posting of the cases for consideration of C.M.P.Nos.824 & 828/04.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge